

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

DARIN J. FRANKLIN,

Plaintiff,

v.

TANIA ARGUELLO,

Defendants.

Case No. 3:15-cv-00196-RCJ-WGC

**ORDER**

Before the court is Plaintiff's Motion to Strike/Dismiss Defendants' Untimely Filed Reply (ECF No. 52) to Partial Motion to Dismiss. (Electronic Case Filing (ECF) No. 54.) Defendants filed a response (ECF No. 57), and Plaintiff filed a reply (ECF No. 61).

Plaintiff asserts that he filed his response to Defendants' partial motion to dismiss electronically on December 20, 2016. (ECF No. 54 at 2; response at ECF No. 50.) CM/ECF indicated that the reply was due by December 27, 2016. (*Id.*, CM/ECF entry at ECF No. 50.) Defendants did not file a request for an extension of time to file their reply brief, and filed the brief electronically on January 4, 2017. (*Id.* at 3; reply at ECF No. 52.) As such, Plaintiff asks that the court strike the untimely reply. (*Id.* at 3-4.)

In their response, Defendants state that due to a clerical error the reply was calendared for January 4, 2017: "Due to a clerical error, (the Reply was calendared as a Reply to a Dispositive Motion which is 14 days plus 3 for mailing), the Defendants' Reply in Support of Defendants' Partial Motion to Dismiss was filed on January 4, 201[7]." (ECF No. 57 at 1:28, 2:1-2.)

Under Local Rule 7-2(b), the deadline for Defendants to file and serve a reply is seven days after the response. Therefore, the reply should have been filed by December 27, 2016.

1 While Federal Rule of Civil Procedure 12(f) provides authority for the court to strike  
2 "redundant, immaterial, impertinent, or scandalous matter" from a *pleading*, it does not authorize  
3 the court to strike material contained in other documents filed with the court. *See* Fed. R. Civ. P.  
4 12(f). Courts, however, have inherent powers to control their dockets, *see Ready Transp., Inc. v.*  
5 *AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010) (citations omitted), and to "achieve the orderly  
6 and expeditious disposition of cases." *Chambers v. Nasco, Inc.*, 501 U.S. 32, 43 (1991). "This  
7 includes the power to strike items from the docket as a sanction for litigation conduct." *Ready*,  
8 627 F.3d at 404 (citations omitted); *see also Wallace v. U.S.A.A. Life General Agency, Inc.*, 862  
9 F.Supp.2d 1062, 1068 (D. Nev. 2012) (citing *Ready*, 627 F.3d at 404). "Such power is  
10 indispensable to the court's ability to enforce its orders, manage its docket, and regulate  
11 insubordinate...conduct." *Id.* (citing *Mazzeo v. Gibbons*, No. 2:08-cv-01387-RLH-PAL, 2010  
12 WL 3910072, at \* 2 (D. Nev. Sept. 30, 2010)).

13 "When an act may or must be done within a specified time, the court may, for good  
14 cause, extend the time: (A) with or without motion or notice if the court acts, or if a request is  
15 made, before the original time or its extension expires; or (B) on motion made after the time has  
16 expired if the party failed to act because of excusable neglect." Fed. R. Civ. P. 6(b)(1)(A)-(B).  
17 Defendants did not file a request to extend the time to file their reply before it was due, and they  
18 did not make a motion after the time to file the reply expired.

19 Nevertheless, through its response to Plaintiff's motion, Defendants have in effect asked  
20 the court to extend the time, *nunc pro tunc*, to file their reply. Plaintiff opposes that request in his  
21 reply brief. Considering Defendants' request as a "motion" for purposes of Rule 6(b)(1)(B), the  
22 Ninth Circuit applies a four-factor equitable test in determining "whether a party's failure to  
23 meet a deadline constitutes 'excusable neglect.'" *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d  
24 1253, 1261 (9th Cir. 2010) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507  
25 U.S. 380, 395 (1993) and *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997)).  
26 The factors are: "(1) the danger of prejudice to the opposing party; (2) the length of the delay  
and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the  
movant acted in good faith." *Id.* The Ninth Circuit clarified how to apply this test in *Bateman v.*

1 *U.S. Potal Serv.*, 231 F.3d 1220 (9th Cir. 2000) (court must engage in the four-factor analysis)  
2 and *Pincay v. Andrews*, 389 F.3d 853 (9th Cir. 2004) (en banc) (courts may not create per se  
3 “rigid legal rule against late filings attributable to any particular type of negligence.”). These  
4 factors, and not the Nevada case authority cited by Defendants, govern the court’s analysis here.

5 Here, the reply was filed eight days late because of a calendaring error. There is no  
6 evidence that this delay prejudiced Plaintiff, as the delay is minimal. The short delay has had no  
7 real impact on the proceedings, and there is no evidence of bad faith. Accordingly, the court  
8 concludes that Defendants have established excusable neglect, and Plaintiff’s Motion to Strike  
9 (ECF No. 52) the reply brief is **DENIED**.

10 **IT IS SO ORDERED.**

11 DATED: March 6, 2017.

12  
13   
14 WILLIAM G. COBB  
UNITED STATES MAGISTRATE JUDGE